IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 490.

INTERNATIONAL COMPANY OF ST. LOUIS,
a Corporation,
Petitioner,

vs.

E. R. SLOAN, Receiver of The Federal Reserve Life Insurance Company, a Corporation, and
OCCIDENTAL LIFE INSURANCE COMPANY,
a Corporation,
Respondents.

BRIEF OF RESPONDENT OCCIDENTAL LIFE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GEORGE E. BRAMMER,
Counsel for Respondent.

JOSEPH BRODY,
CLYDE B. CHARLTON,
LOUIS A. PARKER,
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INDEX.

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STATEMENT.

An adequate statement of facts appears in the opinion of the Circuit Court of Appeals for the Tenth Circuit, filed July 12, 1940, not yet reported. A full statement of facts will be found in the Transcript of Record, beginning at page 71. There was no controversy as to the facts.

The Circuit Court of Appeals for the Tenth Circuit held (1) that the Certificate was the equivalent of preferred stock; (2) that the Certificate was intended by the parties thereto to apply only to a voluntary reinsurance, and (3)

that the sale and transfer of Federal Reserve assets to Respondent by a Receiver in insolvency proceedings, was, in legal effect, a foreclosure of the paramount lien held by former policyholders. The Court also specifically held that Respondent acquired from the Receiver only the assets in his hands, not policies as binding obligations of insurance for their respective face amounts.

SUMMARY OF ARGUMENT.

I.

The relation of the holder of the Participating Certificate to the policyholders and creditors of Federal Reserve is equivalent to that of a preferred stockholder.

One who pays money to a corporation and stakes it at the risk and hazard of the business is a stockholder; or if he cannot be so designated he is a joint adventurer with the stockholders and stands in no better position than a stockholder of the corporation.

If it be conceded that the Participating Certificate was intended to create a charge against assets superior to or on a parity with the rights of policyholders and creditors, which Respondent denies, the Certificate is contrary to public policy and void in so far as creditors of the corporation are concerned.

Warren v. King, 108 U. S. 389, 27 L. Ed. 769.
Hamlin v. Toledo, St. Louis & Kansas City R. R. Co., 78 Fed. 664.
Spencer v. Smith, 201 Fed. 647.
Ellsworth v. Lyons, 181 Fed. 55.
Wallerstein v. Ervin, 112 Fed. 124.
Synnott v. Tombstone Consolidated Mines Co., 208 Fed. 251.
In re Desnoyers Shoe Company, 224 Fed. 372.
In re Hicks-Fuller Co., 9 Fed. (2d) 492.
United States and Mexican Oil Co. v. Keystone Auto Gas & Oil Service Co., 19 Fed. (2d) 624.

In re Hawkeye Oil Co., 19 Fed. (2d) 151.
In re Lathrap, 61 Fed. (2d) 37.
In re Phoenix Hotel Co. of Lexington, Ky., 83 Fed. (2d) 724.

II.

The Participating Certificate, fairly construed, was intended by the parties thereto to apply only to a voluntary reinsurance by Federal Reserve of its outstanding policies, and did not contemplate, nor was it intended to apply to liquidating proceedings in insolvency wherein the assets of said company were transferred by the Receiver in consideration of Transferee's agreement to insure former Federal Reserve policyholders on terms acceptable to them and approved by the Court administering the insolvent estate.

The true meaning of the contract is to be determined by examining its terms in the light of the situation of the parties at the time it was made.

Where performance of a contract depends upon the continuing existence of a certain condition or state of things, or on the continuing existence of a certain thing, it is the intent and understanding of the parties that the contract shall cease to be operative if that condition or state of things, or that thing, ceases to exist.

$300,000.00 was paid to Federal Reserve for the express purpose of making good an impairment in trust funds held for the benefit and security of policyholders. Repayment of the Certificate was dependent upon solvency of Federal Reserve and its operation as a going concern on a profitable basis. In addition to contemplating solvency of Federal Reserve the parties to the Certificate contemplated that there would be outstanding policies of insurance which Federal Reserve could itself reinsure. Adjudication of insolvency and the appointment of a Receiver for Federal

Reserve, *ipso facto*, terminated its outstanding policies of insurance.

Moore v. Security Trust & Life Ins. Co., 168 Fed. 496.
Texas Company v. Hogarth Shipping Co., 256 U. S. 619, 65 L. Ed. 1123.
Israel v. Luckenbach Steamship Co., 6 Fed. (2d) 996.
LaCumbre Golf and Country Club v. Santa Barbara Hotel Co., 205 Cal. 422, 271 Pac. 476.
Anderson v. Yaworski, 120 Conn. 390, 180 Atl. 205.
Earn Line S. S. Co. v. Sutherland S. S. Co. (The Claveresk), 264 Fed. 276.
Lewis v. Mowinckel, 215 Fed. 710.
The Allanwilde, 248 U. S. 377, 63 L. Ed. 312.
Snipes Mountain Co. v. Benz Bros., 162 Wash. 334, 298 Pac. 714.
Layton v. Illinois Life Ins. Co., 81 Fed. (2d) 600.
Lorillard v. Clyde, 142 N. Y. 456, 37 N. E. 489.
In re 35% Automobile Supply Co., 247 Fed. 377.
Consolidated Arizona Smelting Co. v. Hinchman, 212 Fed. 813.
Equitable Trust Co. of New York v. United Box Board & Paper Co. et al., 220 Fed. 714.
Kansas Statutes, Sec. 40-404 (R. p. 85).
Indiana Statutes, Sec. 39-4207 (R. p. 86).
Missouri Statutes, Secs. 5704 and 5937 (R. p. 87).

III.

The Participating Certificate was at all times junior and inferior to the trust imposed by law on the assets in favor of Federal Reserve policyholders; and the sale and transfer of those assets to Occidental by a Receiver in insolvency proceedings was, in legal effect, a foreclosure of the paramount lien or interest of the policyholders. Stated differently, Occidental acquired the assets through a title paramount to any interest of the holder of said Certificate and therefore the provisions thereof are not binding on Occidental.

Assuming, without basis in fact or law, that a lien was created by the Certificate, it was junior and inferior to the paramount lien on assets in favor of policyholders.

The foreclosure of a paramount lien and a sale of assets pursuant thereto cuts off every right, title, lien or interest junior and inferior to the paramount lien.

Boston & Albany R. R. Co. v. Mercantile Trust & Deposit Co. of Baltimore, 82 Md. 535, 34 Atl. 778.
National Foundry & Pipe Works v. Oconto City Water Supply Company, 105 Wis. 48, 81 N. W. 125.
Hokanson v. Gunderson, 54 Minn. 499, 56 N. W. 172.
Moore v. New Orleans Waterworks Co., 114 Fed. 380.
Shaw v. Heisey, 48 Iowa 468.
Evans v. Atkins, 75 Iowa 448, 39 N. W. 702.
Porter v. Kilgore, 32 Iowa 379.
Nedderman v. City of Des Moines, 221 Iowa 1352, 268 N. W. 36.
Oil City Boiler Works v. New Jersey Water & Light Co., 81 N. J. Law 491, 79 Atl. 451.
Hobbs, Commissioner v. Occidental Life Ins. Co., 87 Fed. (2d) 380.
Consolidated Arizona Smelting Co. v. Hinchman, 212 Fed. 813.
Corpus Juris, Vol. 35, Par. 104, p. 67.
Phipps v. Chicago, R. I. & P. Ry. Co., 284 Fed. 945.
Daniel v. Layton, 75 Fed. (2d) 135.
Royal Union Life Ins. Co. v. Gross, 76 Fed. (2d) 219.
Kansas Statutes, Sec. 40-406 (R. p. 85).

ARGUMENT.

I.

(Applicable to Petitioner's Assignment of Error A.)

Petitioner's statement that the Fire Insurance Company of Chicago was not a stockholder when it advanced $300,000.00 evidenced by the Certificate is somewhat misleading. On page 76 of the Record is shown a stipulation disclosing

that prior to November 18, 1929, the Fire Insurance Company of Chicago agreed with the Insurance Investment Corporation to purchase a majority of the outstanding shares of stock of the Federal Reserve and to pay to the Federal Reserve $300,000.00 to be evidenced by the Participating Certificate. "Pursuant to said agreement the Insurance Investment Corporation, on November 18, 1929, advanced to the Federal Reserve, on behalf of the Fire Insurance Company of Chicago, $300,000.00 and received from the Federal Reserve said Participating Certificate; that on the same date, to wit, November 18, 1929, the Insurance Investment Corporation assigned and delivered to the Fire Insurance Company of Chicago said Participating Certificate and assigned and delivered, or caused to be assigned and delivered, to the said Fire Insurance Company of Chicago 15,100 shares of Federal Reserve stock, . . .", being a majority of outstanding shares.

It thus clearly appears that to all intents and purposes, and in legal effect, the Fire Insurance Company of Chicago was the controlling stockholder at the time an impairment in the reserves of Federal Reserve was corrected by the payment of $300,000.00, all of which was credited to the surplus account of Federal Reserve (R. p. 76).

At the time of the transaction under consideration the Fire Insurance Company of Chicago, the Federal Reserve and Insurance Investment Corporation were part of a group of companies engaged in trafficing in stocks of insurance companies, said group being managed and controlled by substantially the same coterie of individuals (R. p. 80). From November 18, 1929, to February 11, 1936, Federal Reserve was controlled by the Fire Insurance Company of Chicago or its Receiver (R. p. 76).

Petitioner purchased the Participating Certificate in 1936, for an undisclosed consideration (R. p. 76) at a time

when Federal Reserve receivership proceedings were pending and the company had for two years been denied a license to sell life insurance in any state (R. p. 82).

An attempt is made to distinguish the facts in the present controversy from those involved in many cases cited by Occidental, by asserting that the holder of the Certificate did not have "opportunity for unlimited gain which constitutes the difference between a stockholder and a creditor."

The record shows without controversy that on November 18, 1929, those in stock control of Federal Reserve were confronted with the alternative of making a contribution or having corporate activities of the company terminated. Prior to said date the Fire Insurance Company of Chicago had contracted to purchase stock control of Federal Reserve and to make good an impairment in its reserves by the payment of $300,000.00. Concern for the welfare of policyholders was not the primary reason for making such payment. The dominating motive behind the transaction was a desire to protect an investment in stock and the hope of profit growing out of control of a going concern.

The money evidenced by the Participating Certificate was subjected to the risk and hazard of the business. If, strictly speaking, the holder of the Certificate is not a stockholder, it is, in any event, a grub staker or joint adventurer with the corporation itself and can occupy no better position than a stockholder. The Certificate was payable solely out of profits and could be paid only in the event of successful and profitable operation; there is no due date. It is expressly provided that general assets are not subject to payment of the Certificate. The only assets received by Occidental were assets on deposit with state officials, constituting a trust fund for the benefit and security of policyholders. The Certificate, by its terms, shows that payment

thereof was subject to payment of all creditors of the company, not only policyholders but preferred creditors and ordinary creditors as well. Policyholding creditors were but partially paid and preferred and ordinary creditors received nothing at all (R. p. 92).

When a majority stockholder pays money to an insurance corporation to make good its reserves, making repayment subject and inferior to the rights of all creditors of the corporation to be paid, it is submitted that the money so paid by the stockholder is "special capital" and is, without question, staked at the risk and hazard of the business. It is immaterial whether one who pays money under such circumstances is designated technically as a stockholder or otherwise. The most that can be claimed for such a person is that he is an anomalous creditor. He is a creditor, however, only so far as stockholders are concerned and occupies a position identical with that of a first preferred stockholder.

In the instant case the holder of the certificate subjected the payment of its claim to the payment of all other creditors and occupies a position no better than that of a first preferred stockholder. The same rules apply to the so-called Participating Certificate as if it were technically a certificate of stock. If the Certificate purports to create an equitable charge, it is submitted that in so far as former policyholders of Federal Reserve are concerned, any lien or charge created by the Certificate was and is contrary to public policy and therefore void.

That the conclusion reached by the Trial Court, affirmed by the Circuit Court of Appeals, is sound is convincingly demonstrated by an overwhelming array of authorities. The cases cited by petitioner do not support its position. In *Ketchum v. St. Louis*, 101 U. S. 306, 25 L. Ed. 999, upon which petitioner chiefly relies, there was a statutory ap-

propriation of a definite portion of the future earnings of a railroad for a specific purpose. The statute provided for a custodian whose duty it was to take charge of earnings as they accrued and to apply the same. No action by the Railroad Company was required.

This Court analyzed the *Ketchum* case in *Tompkins v. Little Rock & F. S. R.*, 125 U. S. 109, 31 L. Ed. 615, saying: "In *Ketchum's* case the earnings of the road to the extent that they had been specifically appropriated to the County of St. Louis never did belong to the company after the bonds were accepted, and the grant of the earnings was in equity a grant of such an interest in the road as was necessary to produce the earnings." In the present case Federal Reserve policyholders had a first and paramount lien covering all assets acquired by Occidental. In the *Ketchum* case a mortgage on physical property, executed after a statutory grant of a portion of the earnings, was not a first and paramount lien.

II.

(Applicable to Petitioner's Assignment of Error B.)

Assets acquired by Occidental were assets held in trust by various state officials for the benefit and security of Federal Reserve policyholders. The Court determined that the best interests of policyholders would be served, not by sale of deposited assets piecemeal, but by using said assets for the purpose of purchasing insurance in some solvent company for such policyholders as desired to have their insurance protection resumed. The Court provided that any policyholder who did not desire to accept the benefits of the reinsurance agreement might take his equitable share of the value of the assets in cash. The method of liquidating deposited assets was in law and in fact the method

adopted by the persons who were the equitable and beneficial owners thereof.

On appraisal the value of deposited assets was ascertained to be so far less than the reserves required on outstanding policies on May 22, 1936, that it was necessary for the Court to impose a lien of 50% against the net equities of all policies. In the Reinsurance Agreement Occidental was bound to apply all savings and profits arising from assets acquired from the Receiver, in reduction of the lien imposed by the Court. Such earnings are to be so applied for a period of fifteen years unless the lien be sooner fully discharged.

It is Respondent's contention that the Certificate, when read as a whole and in the light of the circumstances of the parties thereto, and the respective rights in and to the assets of the policyholders on one hand and the Federal Reserve and those claiming under it on the other, was conditioned on the continuing solvency of Federal Reserve, and consequently the parties to said Certificate intended that it should cease to be operative in case of Federal Reserve's insolvency. When the parties inserted the provision relating to reinsurance it was contemplated that the company would have outstanding policies of insurance which it could itself reinsure. It is a firmly established rule that adjudication of insolvency and the appointment of a Receiver for an insurance company terminates outstanding policies and transforms policyholders into creditors.

The parties to the Certificate knew at the time of its execution that the law required the deposit of reserves for the sole benefit of policyholders. The very nature of the Certificate impels the conclusion that it must have been within the contemplation of the parties that Federal Reserve might some day become insolvent and incapable of continuing in the insurance business. That a Court might

assume jurisdiction over the affairs of the company, declare the same insolvent and appoint a receiver therefor, thus terminating the contract by operation of law, was reasonably within the contemplation of the parties.

Payment of the Certificate was dependent upon the solvency of Federal Reserve and its operation as a going concern on a profitable basis. The Certificate contemplated the performance of agreements contained therein by Federal Reserve as a going concern or by a reinsurer who might assume such obligations by a voluntary contractual arrangement with Federal Reserve. Prior to insolvency the Certificate was an executory agreement containing only promises of Federal Reserve. Paragraph 5 of the Certificate begins: "In the event of a reinsurance of the business of The Federal Reserve Life Insurance Company . . .". "Reinsurance" can refer only to insurance contracts of Federal Reserve. On May 22, 1936, outstanding policies were terminated by operation of law and deposited assets became a Trust Fund for the benefit of creditors. After May 22, 1936, former policyholders were creditors, holding, not policies, but claims. After May 22, 1936, Federal Reserve had no "business".

The Certificate, fairly considered and construed, discloses no purpose or intent on the part of Federal Reserve to do more than agree, in case of reinsurance voluntarily effected by Federal Reserve, to require the reinsurer, as a part of the transaction, to assume its obligations under said Certificate. While the Federal Reserve was a going concern it possessed power to control its own business and manage the same. In case it desired to reinsure its policies it was in a position to refuse to do so unless, as a part of the reinsurance arrangement, the reinsurer assumed its obligations under the Certificate. Federal Reserve had a right

to make an agreement with respect to reinsurance, and, prior to insolvency, was in a position to fulfill it.

It is submitted that the Certificate, fairly construed, was intended by the parties to apply only to a voluntary reinsurance by Federal Reserve, and did not contemplate nor was it intended to apply to liquidating proceedings in insolvency. Federal Reserve had no right or power to bind the purchaser of its assets from a Receiver in insolvency proceedings by an executory agreement made in 1929. The conclusion of the Trial Court is fully sustained by the facts and the law.

III.

(Applicable to Petitioner's Assignment of Error C.)

It should be borne in mind that petitioner's claim grows out of a liquidating receivership and that petitioner has disclaimed any charge against tangible assets. Petitioner's claim is to profits and savings arising from the assets subsequent to their acquisition by Occidental from the Receiver. Occidental acquired nothing from the Receiver except assets on deposit with various state officials. While petitioner disclaims a lien against assets, it asserts a lien on savings and profits arising from assets. It is submitted that a charge or lien against savings and profits to arise from assets is in substance and legal effect a charge or lien against the assets themselves.

Petitioner attempts to fasten a lien on savings and profits arising from the "insurance business of the Federal Reserve" as distinguished from tangible assets. After May 22, 1936, outstanding insurance contracts of Federal Reserve were liabilities, not assets. In *Hobbs, Commissioner v. Occidental Life Insurance Company*, 87 Fed. (2d) 380, the United States Circuit Court of Appeals for the Tenth

Circuit, determined the legal effect upon policies and policyholders of the adjudication of insolvency of Federal Reserve and the appointment of a Receiver therefor, saying:

> "It is well settled that upon the adjudication of insolvency and the appointment of a receiver on May 22nd, the policies of Federal Reserve were terminated as enforceable obligations for their respective face amounts, and the holders became creditors each for an amount equal to the then value of his policy . . . The privilege of thus participating in such assets was the only right which the holders had from the adjudication of insolvency until the reinsurance agreement became effective."

On the authority of the *Hobbs* opinion, and many other cases cited, it is plain Occidental acquired nothing from the Receiver except tangible assets.

For the purpose of illustration the Certificate will be assigned a fictitious position and accorded a status which it is not entitled to occupy and which petitioner does not claim for it. Without basis in fact or law, and solely for the purpose of argument, it will be assumed that the Certificate created a lien on assets. If a lien or charge was created by the Certificate, it was inferior and subordinate to the lien imposed on deposited assets in favor of policyholders. That the right, title, lien and interest of policyholders was paramount and superior to any interest, claim or charge in favor of the holder of the Certificate is shown not only by the terms of the various statutes under which Federal Reserve's assets were deposited (R. p. 23), but also by the terms of the Certificate itself. Furthermore, petitioner agrees that all deposited assets were held in trust for the exclusive benefit of policyholders.

It is the contention of Respondent that insolvency proceedings were in the nature of, and in legal effect, a foreclosure of the paramount lien in favor of former policy-

holders of Federal Reserve and that, having acquired said assets through a paramount title or interest, it is not bound by the Certificate. The facts set forth on page 28 of the Record show that what took place was, in legal effect, a sale of the assets to the highest bidder for cash. Advertisements were placed in newspapers and in insurance journals and a personal letter was written by the Receiver to every company authorized to transact business in Kansas, soliciting bids for the assets of Federal Reserve. Eight companies submitted bids. After a hearing in open Court and report of three independent actuaries who were selected to examine the various bids, the Court found that the best price that could be obtained was that offered by Respondent.

Sale and transfer of assets was made only after competitive bidding and the Court secured the highest and best price possible for the assets. The best price obtainable for the assets was not sufficient to pay policy-holding creditors. It was a judicial sale. On the proposition that the sale conducted by the Kansas Court in receivership proceedings was in fact a foreclosure, opinions in *Phipps v. Chicago R. I. & P. Ry. Co.*, 284 Fed. 945; *Daniel v. Layton*, 75 Fed. (2d) 135 and *Royal Union Life Ins. Co. v. Gross*, 76 Fed. (2d) 219, are instructive and convincing.

In the receivership proceedings the Court determined that deposited assets belonged to the policyholders. The only question remaining was how those assets were to be disposed of. The Court could have ordered the assets sold for cash and the proceeds distributed to former policyholders in partial satisfaction of their claims. Had this been done, petitioner would not have suggested that the purchaser of such assets for cash was bound by any provision of the Participating Certificate. It is only because the Court having jurisdiction of the insolvent company chose a method of liquidation more advantageous to the

policyholders than a sale for cash that petitioner asserts a claim against Respondent and the Receiver.

The Court gave each policyholder the option to take his share of the assets in cash or use the same for the purpose of purchasing insurance in a solvent company. The use to which the Court and the policyholders put deposited assets was merely a method of foreclosing the paramount lien of the policyholders against such assets. That the plan employed was the usual and customary method of liquidating a trust for the sole benefit of policyholders is well recognized. Many states have statutes governing life insurance companies which provide that deposited securities, in event of insolvency, may be sold or used to purchase reinsurance. Liquidation occurred when the Court, with the consent of former policyholders of Federal Reserve, sold the deposited assets to Respondent in consideration of its agreement to insure the lives of such policyholders. The sale was a judicial sale; it was a judicial sale to foreclose a paramount lien. The purchaser at such sale acquired the assets through the paramount title and lien of the policyholding creditors, and, having done so, it took the assets free from liability on account of the Certificate.

ADDITIONAL DEFENSES.

In addition to defenses discussed and approved by the Circuit Court of Appeals, several other defenses were interposed by Respondent. Each of said defenses constitutes an effective bar to the claim asserted by petitioner and the Trial Court so held. Three such additional defenses are here set forth.

A.

The Participating Certificate created no lien or encumbrance against the assets of Federal Reserve and conse-

quently the Receiver took said assets free from any liens or encumbrances; and the Receiver having sold said assets free from liens and encumbrances Occidental is not bound to pay Petitioner any profits arising therefrom.

Tompkins v. Little Rock & F. S. R., 125 U. S. 109, 31 L. Ed. 615.
Hakes v. North, 199 Iowa 995, 203 N. W. 238.
Kuppenheimer & Co. v. Mornin et al., 78 Fed. (2d) 261.
Consolidated Arizona Smelting Co. v. Hinchman, 212 Fed. 813.
Eureka Development Co. v. Clements, 44 Idaho 484, 258 Pac. 371.
In re Lathrap, 61 Fed. (2d) 37.
In re Clark Realty Co., 234 Fed. 576.
Silent Friend Mining Co. v. Abbott, 7 Colo. App. 73, 42 Pac. 318.
Union Trust Co. v. Curtis, 182 Ind. 61, 105 N. E. 562.
Metropolitan Life Ins. Co. v. Whitestone, 77 Fed. (2d) 255.
Sherwood v. Atlantic & D. R. Co., 94 Va. 291, 26 S. E. 943.
Gulf, C. & S. F. Ry. Co. v. Newell, 73 Tex. 334, 11 S. W. 342.
McMaster v. R. Emerson and George Stacy, 109 Iowa 284, 80 N. W. 389.
Simmons v. Anderson, 44 Minn. 487, 47 N. W. 52.
United States Nat'l Bank of LeGrande v. Wright et al., 131 Ore. 518, 283 Pac. 1.
Sims v. Jamison, 67 Fed. (2d) 409.
City of Menasha v. Milwaukee & Northern R. R. Co., 52 Wis. 414, 9 N. W. 396.

B.

A lien on future profits cannot attach until such profits come into existence and then only to such interest therein as is then held by the Lienor. No profits could accrue to Federal Reserve after its adjudication as an insolvent and the appointment of a Receiver; hence there can be no lien

on profits arising from assets acquired by Occidental from the Receiver.

McMaster v. R. Emerson and George Stacy, 109 Iowa 284, 80 N. W. 389.
Gerard Trust Company v. Standard Gas Co., 93 N. J. Eq. 307, 115 Atl. 910.
Sims v. Jamison, 67 Fed. (2d) 409.
Simmons v. Anderson, 44 Minn. 487, 47 N. W. 52.
United States National Bank of LaGrande v. Wright et al., 131 Or. 518, 283 Pac. 1.
Consolidated Arizona Smelting Co. v. Hinchman, 212 Fed. 813.
Eureka Development Co. v. Clements, 44 Idaho 484, 258 Pac. 371.

C.

The Participating Certificate was a mere executory agreement which was automatically terminated upon adjudication of insolvency of Federal Reserve and the appointment of a Receiver; and the Receiver did not adopt, affirm or approve the Certificate.

United Electric Securities Co. v. Louisiana Electric Light Co., 71 Fed. 615.
General Electric Co. v. Whitney, 74 Fed. 664.
Lovell v. St. Louis Mutual Life Ins. Co. et al., 111 U. S. 264, 28 L. Ed. 423.
Seaboard Small Loan Corp. v. Ottinger, 50 Fed. (2d) 856.

CONCLUSION.

Respondent does not claim that the Participating Certificate was an invalid contract between the original parties, but it is asserted that it does not constitute a charge or lien against assets acquired by Respondent from the Receiver or against profits arising therefrom.

Principles of law set forth in the Trial Court's conclusions (R. p. 171) are salutary and firmly established by an

overwhelming array of authorities. It is stated with confidence that the cases cited by Petitioner do not support the claim asserted.

Petitioner has shown no valid or substantial reason entitling it to a review on writ of certiorari. The decision of the Circuit Court of Appeals is in harmony with rules uniformly adopted and followed by the Courts, both Federal and State. Alleged errors are without merit. Petitioner has not presented an appropriate case for review by this Court and its prayer for a writ should be denied.

Respectfully submitted,

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